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## Minutes of MAYOR AND COUNCIL Meeting

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Approved by Mayor and Council  
on December 15, 2009

Date of Meeting: June 16, 2009

The Mayor and Council of the City of Tucson met in regular session in the Mayor and Council Chambers in City Hall, 255 West Alameda Street, Tucson, Arizona, at 5:35 p.m., on Tuesday, June 16, 2009, all members having been notified of the time and place thereof.

### 1. ROLL CALL

The meeting was called to order by Mayor Walkup and upon roll call, those present and absent were:

Present:

Regina Romero  
Rodney Glassman

Vice Mayor, Council Member Ward 1  
Council Member Ward 2 (Electronic attendance)  
(Arrived at 5:50 p.m.)

Karin Uhlich  
Shirley C. Scott  
Steve Leal  
Nina J. Trasoff  
Robert E. Walkup

Council Member Ward 3  
Council Member Ward 4  
Council Member Ward 5  
Council Member Ward 6  
Mayor

Absent/Excused:

None

Staff Members Present:

Mike Letcher  
Michael Rankin  
Deborah Rainone

City Manager  
City Attorney  
Chief Deputy City Clerk

## **2. INVOCATION AND PLEDGE OF ALLEGIANCE**

The invocation was given by Rabbi Samuel Cohon, Temple Emanu-El, after which the Pledge of Allegiance was presented by the entire assembly.

Presentations:

- a. Mayor Walkup proclaimed June to be “National CPR and AED Awareness Month.” Mayor Walkup presented the proclamation to Dana Jirauch and John Hayes who passed out a Friends and Family CPR Anytime Kit to Mayor and Council, and demonstrated its use.

Deborah Rainone, Chief Deputy City Clerk, announced Council Member Glassman was unable to be present for the evening’s meeting, but he would be participating by telephone. This was allowable under the Mayor and Council Rules and Regulations. She stated Council Member Glassman advised the City Clerk of his location, and assured her that no one else was present with him. Council Member Glassman could vote on all matters in the same way as those members physically present as long as he participated in the discussions. On the evening’s agenda, all votes would be done by roll call rather than voice vote.

## **3. MAYOR AND COUNCIL REPORT: SUMMARY OF CURRENT EVENTS**

Mayor Walkup announced City Manager’s communication number 328, dated June 16, 2009, was received into and made part of the record. He also announced this was the time scheduled to allow members of the Mayor and Council to report on current events and asked if there were any reports.

- a. Vice Mayor Romero invited the public to attend a ceremony for the Grijalva School and Community Park Dedication held on June 20, 2009.

Vice Mayor Romero asked the public to attend the Summer Kid’s Classic Movie Series at the Fox Theatre starting on June 20, 2009. Other upcoming dates included July 11, 2009, July 18, 2009, July 25, 2009, August 1, 2009, August 8, 2009 and August 15, 2009.

Vice Mayor Romero invited the public to attend Tucson’s Thirty-Ninth Juneteenth Festival at Kennedy Park held on June 20, 2009. Food and entertainment would be provided.

Vice Mayor Romero recommended the public attend the traditional Dia de San Juan Festival held on June 24, 2009 at Congress Avenida del Convento with food and entertainment provided.

- b. Council Member Scott announced Ward 4 would host a Crime and Fraud Prevention Forum on July 8, 2009, at the Clements Center.

#### **4. CITY MANAGER'S REPORT: SUMMARY OF CURRENT EVENTS**

Mayor Walkup announced City Manager's communication number 329, dated June 16, 2009, was received into and made part of the record. He also announced this was the time scheduled to allow the City Manager to report on current events, and asked for that report.

Mike Letcher, City Manager, announced that he was pleased to promote Richard Miranda as the new Deputy City Manager as of July 1, 2009.

#### **5. LIQUOR LICENSE APPLICATIONS**

Mayor Walkup announced City Manager's communication number 330, dated June 16, 2009, was received into and made part of the record. He asked the Chief Deputy City Clerk to read the Liquor License Agenda.

b. Liquor License Application(s)

NOTE: There are no new license(s) scheduled for this meeting.

c. Special Event(s)

NOTE: There are no special event(s) scheduled for this meeting.

d. Agent Change/Acquisition of Control/Restructure

1. ALJS Tavern, Ward 5  
4980 E. 22nd St.  
Applicant: Raul Humberto Rodriguez  
Series 6, City AC3-09  
Action must be taken by: June 28, 2009

Tucson Police Department has indicated the applicant is not in compliance with city requirements.

Revenue has indicated the applicant is in compliance with city requirements.

The applicant requested that Item 5d1 be continued to the meeting of June 23, 2009.

NOTE: The local governing body of the city, town or county may protest the acquisition of control within sixty days based on the capability, reliability and qualification of the person acquiring control. (A.R.S. Section 4-203.F)

**6. CALL TO THE AUDIENCE**

Mayor Walkup announced this was the time any member of the public was allowed to address the Mayor and Council on any issue except for items scheduled for a public hearing. Speakers were limited to three-minute presentations, and the call to the audience was scheduled to last thirty minutes.

- a. Joe Sweeney spoke about immigration and City budget issues.

**7. CONSENT AGENDA – ITEMS A THROUGH J**

Mayor Walkup announced the reports and recommendations from the City Manager on the Consent Agenda were received into and made part of the record. He asked the Chief Deputy City Clerk to read the Consent Agenda.

**A. APPROVAL OF MINUTES**

1. Report from City Manager JUN16-09-332 CITY-WIDE
2. Approval of minutes for the regular meeting of the Mayor and Council held on March 24, 2009.

**B. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY ELECTIONS DIVISION FOR ELECTION SUPPORT SERVICES**

1. Report from City Manager JUN16-09-333 CITY-WIDE
2. Resolution No. 21316 relating to Elections; approving, and authorizing execution of, an Intergovernmental Agreement between the City of Tucson and Pima County relating to support services provided by the Pima County Elections Division for the 2009 City of Tucson Primary, General, and Special Elections; and declaring an emergency.

**C. ZONING: CASA DE LOS NIÑOS FOR PAD-20, WAIVER OF MINIMUM ACREAGE REQUIREMENT FOR PAD DISTRICT**

1. Report from City Manager JUN16-09-336 WARD 6
2. This is a request by the Planning Center on behalf of Casa de los Niños for a waiver of the forty acre minimum land area required for Planned Area Development (PAD) districts to allow for consolidation of all its operations onto one location, and to eliminate any existing nonconforming use issues of the 3.3-acre site located at the northwest corner of 4<sup>th</sup> Avenue and Speedway Boulevard.

Staff recommends authorization of a Planned Area Development (PAD) District for the 3.3-acre site at the northwest corner of 4<sup>th</sup> Avenue and Speedway Boulevard. This will allow the applicant to proceed in the rezoning process and submit a rezoning application for a PAD.

D. ZONING: BROADWAY VILLAGE SHOPPING CENTER FOR PAD-19, WAIVER OF MINIMUM ACREAGE REQUIREMENT FOR PAD DISTRICT

1. Report from City Manager JUN16-09-337 WARD 6
2. This is a request by the ownership of Broadway Village Shopping Center for a waiver of the forty acre minimum land area required for Planned Area Development (PAD) districts to allow for the upgrade, preservation, and redevelopment of the 2.73-acre site, at the southwest corner of Broadway Boulevard and Country Club Road.

Staff recommends authorization of a Planned Area Development (PAD) District for the 2.73-acre site at the southwest corner of Broadway Boulevard and Country Club Road. This will allow the applicant to proceed in the rezoning process and submit a rezoning application for a PAD.

E. ANNEXATION: ESTATES AT STARR PASS ANNEXATION DISTRICT, ORDINANCE ADOPTION

1. Report from City Manager JUN16-09-339 WARD 1
2. Ordinance No. 10670 relating to annexation; extending and increasing the corporate limits of the City of Tucson, Pima County, Arizona pursuant to the provisions of Title 9, Chapter 4, Arizona Revised Statutes, by annexing the property located along the south side of Anklam Road, extending westward, adjoining the City along its southern boundary adjacent to Starr Pass, more particularly described in Exhibits A and B to this ordinance; providing that pursuant to Arizona Revised Statutes Section 9-462.04(E), existing Pima County zoning shall continue in effect until original City zoning becomes effective, but in no event longer than six months after annexation.

F. REAL PROPERTY: ACQUISITION OF RIGHT-OF-WAY FOR THE HOUGHTON ROAD AND OLD VAIL ROAD INTERSECTION IMPROVEMENT PROJECT

1. Report from City Manager JUN16-09-335 WARD 4
2. Resolution No. 21317 relating to real property; authorizing the City Manager to acquire by negotiation, and the City Attorney to condemn if necessary, certain real property needed as right-of-way for the Houghton Road and Old Vail Road Intersection Improvement Project; and declaring an emergency.

G. INTERGOVERNMENTAL AGREEMENT AMENDMENT: WITH PIMA COUNTY FOR THE THOMAS O. PRICE SERVICE CENTER WIRELESS INTEGRATED NETWORK PROJECT

1. Report from City Manager JUN16-09-343 CITY-WIDE AND OUTSIDE CITY.

2. Resolution No. 21318 relating to Intergovernmental Agreements; authorizing and approving the execution of Amendment No. 1 to the Intergovernmental Agreement between Pima County and the City of Tucson for Architectural Design Review Services Associated with Renovation of the Thomas O. Price (TOPSC) Service Center for the Pima County Wireless Integrated Network Project (PCWIN); and declaring an emergency.
- H. INTERGOVERNMENTAL AGREEMENT: WITH PIMA COUNTY REGIONAL FLOOD CONTROL DISTRICT FOR ACCESS TO EFFLUENT, LAND AND EASEMENT ACQUISITIONS
1. Report from City Manager JUN16-09-345 CITY-WIDE AND OUTSIDE CITY
  2. Resolution No. 21320 relating to Intergovernmental Agreements; approving and authorizing execution of an Intergovernmental Agreement between the City of Tucson, Pima County Regional Flood Control District for access to effluent and land and easement acquisitions; and declaring an emergency.
- I. AGREEMENTS: AMENDING THE DOWNTOWN TUCSON ENHANCED SERVICES AGREEMENT AND APPROVING AN AGREEMENT WITH THE PARTNERSHIP FOR PARKING SERVICES
1. Report from City Manager JUN16-09-346 CITY-WIDE
  2. Resolution No. 21321 relating to the Downtown Tucson Enhanced Services Agreement; amending the Downtown Tucson Enhanced Services Agreement Number Two to permit agreements for the operation, maintenance, and other administrative requirements of the City Parkwise Program; and declaring an emergency.
  3. Resolution No. 21322 relating to Parkwise; approving an agreement with the Downtown Tucson Partnership to operate certain City of Tucson parking assets and to perform related services for Parkwise; and declaring an emergency.
- J. GRANT: SUBMISSION OF STIMULUS GRANT FROM BUREAU OF RECLAMATION FOR ENVIRONMENTAL WATER BANKING PROGRAM
1. Report from City Manager JUN16-09-348 CITY-WIDE AND OUTSIDE CITY
  2. Resolution No. 21323 relating to water; authorizing and approving the City Water Department's submission of the Stimulus Grant application to the Bureau of Reclamation for "Environmental Water Banking" Program; authorizing the City Manager to sign the Grant Agreement if awarded; and declaring an emergency.

It was moved by Council Member Trasoff, duly seconded, that Consent Agenda Items A through J be passed and adopted and the proper action taken.

Mayor Walkup asked if there was any discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Glassman, Uhlich, Scott, Leal, and Trasoff; Vice Mayor Romero and Mayor Walkup

Nay: None

Consent Agenda Items A through J were declared passed and adopted by a roll call vote of 7 to 0.

**8. TUCSON CODE: AMENDING (CHAPTER 19) THE MODEL CITY TAX CODE**

Mayor Walkup announced City Manager's communication number 334, dated June 16, 2009, was received into and made part of the record.

Mayor Walkup asked the Chief Deputy City Clerk to read Ordinance 10685 by number and title only.

Ordinance No. 10685 relating to taxation; increasing the Transaction Privilege rate on Public Utilities by amending Tucson Code §§19-1070(a)(1) and 1080(a); increasing the surtax on Transient Rental Occupancy; imposing a Transaction Privilege Tax on the business of health spas and other fitness related businesses; amending Tucson Code § 19-66 (b) to increase hotel bed surcharge; and declaring an emergency.

It was moved by Council Member Uhlich, duly seconded, to pass and adopt Ordinance 10685.

Mayor Walkup asked if there was any discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Uhlich, Scott, Leal and Trasoff; Vice Mayor Romero and Mayor Walkup

Nay: Council Member Glassman

Ordinance 10685 was declared passed and adopted by a roll call vote of 6 to 1.

**9. TUCSON CODE: AMENDING (CHAPTER 4) RELATING TO PIMA ANIMAL CARE CENTER FEES**

Mayor Walkup announced City Manager's communication number 342, dated June 16, 2009, was received into and made part of the record.

Mayor Walkup asked the Chief Deputy City Clerk to read Ordinance 10683 by number and title only.

Ordinance No. 10683 relating to animals; revising Tucson Code Chapter 4, Animals and Fowl, Article V, Dogs, to increase various fees related to dog licenses; and declaring an emergency

It was moved by Council Member Scott, duly seconded, to pass and adopt Ordinance 10683.

Mayor Walkup asked if there was any discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Glassman, Uhlich, Scott, Leal and Trasoff; Vice Mayor Romero and Mayor Walkup

Nay: None

Ordinance 10683 was declared passed and adopted by a roll call vote of 7 to 0.

**10. CITY MAGISTRATES: APPOINTING PAMELA M. KATZENBERG AS A SPECIAL CITY MAGISTRATE AND FIXING COMPENSATION**

Mayor Walkup announced City Manager's communication number 338, dated June 16, 2009, was received into and made part of the record. He asked the Deputy City Clerk to read Ordinance 10680 by number and title only.

Ordinance No. 10680 relating to City Magistrates; appointing Pamela M. Katzenberg Special City Magistrate of the City of Tucson; fixing compensation; and declaring an emergency.

It was moved by Council Member Glassman, duly seconded, to pass and adopt Ordinance 10680.

Mayor Walkup asked if there was any discussion.

Council Member Scott asked the Presiding Magistrate of the City Court to clarify that appointing or re-appointing magistrates would not place him in a financial bind with

his budget. She said many departments within the City were anticipating possible additional cuts in the future and she wanted to make sure he was not placing himself in a position where magistrates were appointed, only to possibly be released later. She wanted to know if that scenario applied to his staff and magistrates, and whether there was a possibility of lay-offs in the future.

Antonio J. Riojas, City Court Presiding Magistrate, said the scenario did not apply. He added that the current budget as adopted by the Mayor and Council provided for full employment of all the magistrates. He said some of his department's special funds were being used to make up the differences in losses, and cuts had been made as requested by the City Manager's Office.

Council Member Scott confirmed that Judge Riojas did not expect any future lay-offs of staff or magistrates in the near future because of financial issues.

Judge Riojas replied that barring a significant, unexpected economic downturn and based on the current situation, he did not anticipate any changes.

Mayor Walkup asked if there was any further discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Glassman, Uhlich, Scott, Leal and Trasoff; Vice Mayor Romero and Mayor Walkup

Nay: None

Ordinance 10680 was declared passed and adopted by a roll call vote of 7 to 0.

**11. CITY MAGISTRATES: APPOINTING WENDY MILLION AND THEODORE C. ABRAMS AS CITY MAGISTRATES AND FIXING COMPENSATION**

Mayor Walkup announced City Manager's communication number 340, dated June 16, 2009, was received into and made part of the record. He asked the Chief Deputy City Clerk to read Ordinance 10681 and Ordinance 10682 by number and title only.

Ordinance No. 10681 relating to City Magistrates; appointing Wendy Million as City Magistrate of the City of Tucson; fixing compensation; and declaring an emergency.

Ordinance No. 10682 relating to City Magistrates; appointing Theodore C. Abrams as City Magistrate of the City of Tucson; fixing compensation; and declaring an emergency.

It was moved by Council Member Uhlich, duly seconded, to pass and adopt Ordinance 10681.

Mayor Walkup asked if there was any discussion.

Council Member Trasoff said there were two magistrates who were about to be appointed, whose pay rates were different, and asked Judge Riojas to explain the difference. She said she understood that it was due to timing and furlough days.

Mike Rankin, City Attorney, replied the ordinance appointing Judge Abrams reflected a lower compensation level. He added it was not because his service was valued any less than other magistrates; it was in fact to reflect a reduction commensurate with the five furlough days other City employees would be serving in the upcoming fiscal year. He said it was his anticipation that upon the re-appointment of a magistrate for next fiscal year, the salary would be adjusted to reflect the current level, so there would not be a reduction associated with the furloughs. Mr. Rankin added that along those lines, regarding the recent amendments to the pension ordinance, a provision was included to hold City employees harmless against a pension hit associated with the furloughs.

Mr. Rankin said the furlough days would still count as accrued time. He added clarification would be brought back to that section, prior to the effective date of Judge Abrams' ordinance, by making it clear the protection applied equally to the magistrates as it did to other City employees; and it would be brought up at the August 5, 2009 meeting. Mr. Rankin said that when a magistrate was appointed next year, they would make sure the salary was at the same level as the current salary.

Mayor Walkup asked if there was any further discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Glassman, Uhlich, Scott, Leal and Trasoff; Vice Mayor Romero and Mayor Walkup

Nay: None

Ordinance 10681 was declared passed and adopted by a roll call vote of 7 to 0.

It was moved by Council Member Uhlich, duly seconded, to pass and adopt Ordinance 10682.

Mayor Walkup asked if there was any discussion.

Council Member Scott thanked and saluted the magistrates for being among the other City employees willing to take five furlough days, and that they were among the rest of the City staff taking a big hit and she was very grateful.

Mayor Walkup asked if there was any further discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Glassman, Uhlich, Scott, Leal and Trasoff; Vice Mayor Romero and Mayor Walkup

Nay: None

Ordinance 10682 was declared passed and adopted by a roll call vote of 7 to 0.

## **12. CITY MANAGER: APPOINTMENT OF THE CITY MANAGER**

Mayor Walkup announced City Manager's communication number 344, dated June 16, 2009, was received into and made part of the record. He asked the Deputy City Clerk to read Ordinance 10684 by number and title only.

Ordinance No. 10684 relating to the City Manager; appointing a City Manager; and declaring an emergency.

Council Member Leal said he was happy with the appointment of Mike Letcher, and had seen overtime his posture of wanting to partner and put assumptions aside to figure things out; and he knew the Mayor and Council valued that. Council Member Leal said it increased the likelihood that things could only improve when people acted that way.

It was moved by Council Member Leal, duly seconded, to pass and adopt Ordinance 10684.

Mayor Walkup asked if there was any discussion.

Council Member Uhlich said she noted the public's sensitivity as well as Council Member Scott's previous comment. She asked Mr. Letcher if he would be subjected to the same furlough days and benefit reductions that had been negotiated.

Mike Rankin, City Attorney, said that after speaking with the City Manager about the issue, the ordinance did not need to be amended to reflect the City Manager and other appointed officials taking the unpaid leave on the designated furlough days that applied to other City employees.

Council Member Uhlich thanked Mr. Letcher for his service.

Vice Mayor Romero said she was very happy for Mr. Letcher's service and his willingness to listen to different segments of the community. She said she was very impressed by Mr. Letcher's diligence and his open mindedness in opening his office and offering his time to City employees and Council Offices. Vice Mayor Romero said she appreciated his service and looked forward to a good partnership with the residents of the City of Tucson and the Mayor and Council.

Mayor Walkup told Mr. Letcher and Richard Miranda, Deputy City Manager, that he was very pleased with their quick leadership. He said there were moments when fast responses and actions were needed to ensure the City was well served. He added they both had done a great job and he was pleased that Mr. Letcher would receive a unanimous endorsement for his leadership.

Council Member Scott thanked Mr. Letcher for the good work he was doing. She said there used to be more people on the tenth floor and now it fell on his shoulders. She thanked him for his service, and said he was doing yeoman's work.

Mayor Walkup asked if there was any further discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Glassman, Uhlich, Scott, Leal and Trasoff; Vice Mayor Romero and Mayor Walkup

Nay: None

Ordinance 10684 was declared passed and adopted by a roll call vote of 7 to 0.

**13. LABOR AGREEMENT: WITH THE INTERNATIONAL ASSOCIATION OF FIREFIGHTERS, LOCAL 479/TUCSON FIREFIGHTERS ASSOCIATION**

Mayor Walkup announced City Manager's communication number 341, dated June 16, 2009, was received into and made part of the record. He asked the Chief Deputy City Clerk to read Resolution 21319 by number and title only.

Resolution No. 21319 relating to employee relations; authorizing the City Manager to execute an agreement with the International Association of Firefighters, AFL-CIO, Local 479; and declaring an emergency.

Mayor Walkup asked if there was any discussion.

Council Member Trasoff said it was important to note City employees as a whole had taken cuts totaling 5.7 million dollars in order to help balance the City budget for fiscal year 2010. She said the past agreement entitled them to receive one personal leave day and a seven hundred sixty-five dollar allowance for uniforms twice a year, the latter of which did get tested as firefighters. She said they were now only receiving four hundred sixty-five dollars, which was three hundred dollars less twice a year, and would now be out-of-pocket contributions. She said with regard to the pension contributions, the employees would be paying one percent more for the upcoming fiscal year and the City one- percent less, which was a big help.

Council Member Trasoff said in terms of compensation time, the employees were allowed to max out at one hundred eighty hours instead of sixty hours, and instead of the employees getting paid overtime when they were called in, they would earn compensation time, which saved the City a great deal of money. She took a moment to thank the firefighters for being partners with the City and for stepping up and acknowledging the difficult circumstances in which the City found itself.

It was moved by Council Member Trasoff, duly seconded, to pass and adopt Resolution 21319.

Mayor Walkup asked if there was any further discussion.

Council Member Glassman echoed many of the sentiments raised by Council Member Trasoff. He said he had recently bragged about the Tucson Fire Department and the many great things being done, specifically the Alpha Trucks. As the Chair of the Public Safety Subcommittee, he said he wanted to thank the Tucson Firefighters and the men and women keeping the community a safer place.

Mayor Walkup asked if there was any further discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Glassman, Uhlich, Scott, Leal and Trasoff; Vice Mayor Romero and Mayor Walkup

Nay: None

Resolution 21319 was declared passed and adopted by a roll call vote of 7 to 0.

**14. DEVELOPMENT AGREEMENT: WITH DOWNTOWN TUCSON DEVELOPMENT COMPANY, LLC FOR REDEVELOPMENT OF EAST CONGRESS STREET AND OTHER DOWNTOWN AREAS**

Mayor Walkup announced City Manager's communication number 347, dated June 16, 2009, was received into and made part of the record. He asked the Chief Deputy City Clerk to read Resolution 21324 by number and title only.

Resolution No. 21324 relating to development; approving and authorizing the execution of a Development Agreement between the City of Tucson and the Downtown Tucson Development Company, LLC for the redevelopment of east Congress and other downtown areas; and declaring an emergency.

Mike Letcher, City Manager, said this was a very unique agreement in hard economic times. He said one of the things to be recognized was that the country was in the clutches of a very deep recession, and there was an opportunity in Tucson for a

development agreement which would add to the critical mass already developing on the east end of Congress Street. He said the Martin Luther King (MLK) Development was going on, the Fourth Avenue Underpass would be opening up, and Maynard's had already opened, all providing an opportunity for critical mass as part of the overall picture for economic development.

Mr. Letcher said the deal was an investment of five million dollars in tough economic times, and there were some members of the community who said the investment would have to be made anyway; the question was whether to invest five million dollars at that point in time on the east end of Congress Street. Mr. Letcher recognized the involvement of the City Attorney for simplifying it, because what had previously been before the Mayor and Council a few weeks ago was a very complex agreement.

Mr. Letcher said the Agreement provided the Rialto Theatre, for the first time, control over space they occupied for the Theatre to operate. He added one of the things that had not come out in the discussions, was the importance of the interdependence between the Rialto Theatre and the development. Mr. Letcher said the development's success, was success for the Rialto Theatre. He said he thought, in terms of the Agreement's context and complexity; it should be kept in the forefront. He thought the Mayor and Council wanted to do what was best for Tucson and the community.

Mike Rankin, City Attorney, said he would walk through the changes from what was seen at Study Session on June 2, 2009, and what was being presented. He said although it was outlined in the Mayor and Council communication, there were some significant changes, and it was worth the time to go through them. Mr. Rankin first acknowledged the late delivery, and he knew that with an item of this magnitude and importance, it put the Mayor and Council in a difficult position. He said the fact was everyone had been working under a deadline with a reminder that it was a product dating back to a Pre-Development Agreement (PDA) approved by the Mayor and Council on December 16, 2008. A fundamental piece of that Agreement was that the parties had six months to continue negotiations towards a final development agreement, and that was why it was placed on the agenda for the Mayor and Council's consideration.

Mr. Rankin said the discussion on June 2, 2009, engendered a certain amount of changes and getting those done and presented to the Mayor and Council took a bit of work. But it was done as soon it could, and some of those changes were significant. He said a quick reminder of the Mayor and Council's discussions and direction from the June 2, 2009 Study Session, indicated there was an interest in reducing the number of contingencies and assumptions which were in the draft as well as attempting to resolve the issues relating to the Rialto Theatre.

Mr. Rankin said in the summary of changes, the prior draft considered on June 2, 2009, had provisions under which the Developer could earn 1.6 million dollars in option rights against City owned properties in two ways. He said the first way was through cash contributions to specified arts organizations, Scrappy's and the Façade

Improvement Program, and secondly, through the construction of the mixed use Arts Building on Toole Street. The Arts Building project was contingent on the City's acquisition of specified properties from the Arizona Department of Transportation (ADOT) and the City was not really in a realistic position, particularly with respect to the parking lot adjacent to 191 and 197 East Toole Street.

Mr. Rankin said it was also contingent on financing the development end of the business plan and the City's environmental and archeological clearance of that site, where it was known there were issues. Mr. Rankin said the biggest change between what was seen June 2, 2009 and what was in front of the Mayor and Council that evening was due to the contingent nature of that portion of the transaction, and the Mayor and Council's direction to do something to try and focus on the Rialto Theatre issues. He said the Arts Building project had been removed from the Development Agreement. Instead, the Developer could now earn 1.6 million dollars in option rights with a series of investments valued for purposes of the Development Agreement at 1.7 million dollars with the following investments:

- 1) Cash contributions of six hundred thousand dollars which broken down were one hundred fifty thousand to Skrappy's, three hundred thousand for the Distributor Program, formerly the Artists in Residence Program, and one hundred fifty thousand to the Warehouse Arts Management Organization (WAMO).
- 2) Conveyance to the Rio Nuevo District of the two bays located east and west of the Rialto Theatre lobby for use by the Rialto Theatre Foundation.
- 3) Leasing the Rialto "green room" premises to the Foundation with an initial five-year rent free period followed by a series of five-year options at market value not terminable during the first five years but subject to termination after that with some additional conditions to be discussed later.
- 4) Four hundred thousand dollars for improvements to the restroom facilities, the box office, handicap restrooms, and a seating lounge within the Theatre lobby as well as the associated façade work.
- 5) Expending two hundred thousand dollars for an elevator between the first and second floors as well as a second-floor balcony structure adjacent to Herbert Avenue.

Mr. Rankin said, as far as contributions to the Distributor Program were concerned, those were contingent upon the City's acquisition through an exchange with ADOT of two properties of 191 and 197 E. Toole Street, often referred to as the Museum of Contemporary Art (MOCA) and Scrappy's buildings. Mr. Rankin said if that could not be done, the Developers would not make the three hundred thousand dollar contribution and they would not get the value of the three hundred thousand dollars in credits toward the properties.

Mr. Rankin stated, with respect to the conveyance of the properties and the lease to the Rialto Theatre and the Rio Nuevo District, the terms included the Developers' conveyance of the two Theatre lobby bays, provision of the five-year rent-free lease and investments in the Theatre improvements which were contingent upon:

- 1) Execution within six months of a lease with the Foundation that provided for the initial term of five years with no rent payable, with an option in favor of the Foundation to extend the term for three additional five-year periods with rent set at fair market.
- 2) Final determination of the parties' access rights and easements to be conveyed. It was noted that currently, the Foundation had not agreed to those terms and they made it clear their position that no easement rights should be involved in the conveyance and should be conveyed to the Developer. Their position was also that these contributions by the Developer should be mandatory and they should not receive any land credits under the deal until these conveyances were made.
- 3) In the event that the parties could not successfully execute the lease and conveyance agreement in the course of the six month defined period, the Developer would not earn the related option credits which were at a million dollars.

Mr. Rankin stated that other changes based on the Mayor and Council direction from June 2, 2009 incorporated into the Agreement were that all references to credits in the prior draft for leased renewals as opposed to new leases had been removed. He said the Agreement also provided that at least one half of the aggregate square footage of new leases that gave rise to option credits must be located within the Rialto Block and not just generally within the entertainment district. He said an earlier provision was that the Developer would have had the right to act as a Developer and collect a development fee for the development of an additional garage in the area, but had been removed in its entirety. Mr. Rankin stated that the Agreement's earlier language concerning the Developers' commitment for a one percent point-of-sale contribution to benefit the affordable housing trust fund had been amended to provide that it applied to all the properties they acquired through the lease options, including those of residential or commercial use.

Mr. Rankin thought it had been a long and tough road, and it had been an Agreement that changed form and shape over time, particularly since the time of the execution of the Pre Development Agreement in December of 2008. He said it certainly involved many interested parties, including many interested third parties that were beneficiaries under the Agreement. He said in addition, there were many moving parts with the ADOT transfers, the associated land clearances, and the change from the emphasis on the planning work and the warehouse rehabilitation to the current investments in the Rialto Theatre. Mr. Rankin said the Agreement was now in front of

the Mayor and Council for their consideration and discussion, and he was there to answer any questions they might have.

Council Member Trasoff said it had been a long process and she thought it was much simpler now than when they first started, but there were still a lot of moving parts. Council Member Trasoff said she was pleased with some of the efforts made and appreciated the garage being removed, which she felt did not belong. She said one of the changes she asked for, which benefited the Rialto Theatre, was the green room, which bordered Broadway Boulevard and would have a five-year free lease after which it would be negotiated at subsequent five-year market rate leases. She added that at some point, the partners would want to develop that property. She said it was important the Theatre held on to the green room as part of its operation so the language had been clarified to indicate that the Rialto Theatre would always be able to have a green room on that block. She said if and when they razed the current building, there would be temporary quarters for the green room within the Rialto Block and that when the building was rebuilt; there would be space there for a continued lease under the terms mentioned.

Council Member Trasoff said she thought it was an important concession to protect the Rialto and make sure it had the facilities it needed. She noted the question had been raised regarding what would happen if the Agreement went forward and the Developer gave the two bays to the Rio Nuevo Facilities District Board (RNFDB) enabling the City to acquire the two bays and have the lease executed in the back. She said one of the essential parts was the easement to the balcony, so that patrons from the balcony would have wheelchair accessibility to the balcony for the first time, and secondly, the bar being planned by the partners on the second floor would have accessibility to the patrons from the balcony with all appropriate liquor license and ticket protections.

Council Member Trasoff asked what would happen if that point was reached and the Developers received the easement, but did not come up with the four hundred thousand dollars they committed in paying bills for work done on the restrooms, the box office and other improvements. She said what had been worked into the Agreement now was verbiage. If the Developers failed to pay the bills as they became due on the initial four hundred thousand dollars within a timely fashion, and upon notification they did not do it within ten days and they lost the easement, the Theatre would still be able to keep the two bays, as well as the free rent lease on the green room. Council Member Trasoff said she thought it was an additional protection for the Theatre and it was important to be noted.

Council Member Trasoff said she would have a motion to make but she wanted dialogue among her colleagues before doing so. She asked Scott Stiteler, Developer, if he would like to address the Mayor and Council and offer brief comments.

Scott Stiteler said for the better part of the past six months, he has lived in a studio apartment on the top floor at One North Fifth. He said the good news that evening was he had five pages of notes to read but he was not going to read them. He had been

thinking about the development a lot and he wanted to share what he saw and learned in the past six or seven months. Mr. Stiteler noted that the development process started about thirty months ago when he met with Council Members, aides, stakeholders and the City, all working together to get to the present point.

Mr. Stiteler said that in the past six or seven months, since living downtown away from his family, it had been a great experience. He said he woke up early in the morning, made coffee, and looked at the Fourth Avenue Underpass from his balcony. He said the Underpass was a wise investment. Mr. Stiteler said he also saw where Janos Wilder, the noted chef, could go; his patio looked right down at the building and he thought it would be great if Mr. Wilder was in that building by the end of the year. He said it would be a great validation for Tucson and hoped he could walk by and see Janos Wilder's restaurant back downtown.

Mr. Stiteler said he liked to run a lot. He asked a lot of people what they thought about living downtown and ninety percent of the time he was told they liked it. He said it was nice to hear that. He said he usually ran on sidewalks which were broken that had trash and dead plants nearby. He said going back to the start of his development career, when he was nineteen years old, when he saw trash, he picked it up and threw it away. He said he ran by Maynard's, another great investment.

Mr. Stiteler said the consideration and subsidy provided by the Mayor and Council was a good investment. He suggested downtown be visited. He said he ran by Sixth Avenue and Toole Street and was embarrassed by all the graffiti and piles of trash. He said that needed to be changed and the Development Agreement would address those issues. He said he also ran by the Rialto Block on his way back and saw two bays on both sides of the Theatre which were coveted by the Theatre which the Developers wanted to keep. He said the Developers should keep them, as they were important to their development as well. The corner space was only four hundred fifty square feet but was a very important corner of the community. He said it provided the best access to the Developers' upstairs which they wanted to expand by spending five million dollars in the building and bringing twenty, thousand square feet of new users, however, the Theatre needed it more.

Mr. Stiteler said three weeks ago the Mayor and Council passed a resolution that gave those two spaces and the green room to the Developers who supported this. He stated what this meant was that the City would provide land, cash and property for something they wanted and needed but they never had to pay for. Two weeks ago during the Mayor and Council Study Session, his firm was told to work with the Theatre which they did; in their agreement, the Theatre was given the two spaces the Developers wanted, but the Theatre wanted more. He said sometimes one had to give in to be a steward of a private partnership. The agreement gave them the green room with a long-term lease, which he thought was forever and protected them.

Mr. Stiteler said even though the Theatre did not ask for it, the Agreement gave them half a million dollars of cash to be provided by the Developers. He said he had

been thinking a lot about the transaction and all the cash to be provided with the Developers winding up with some City lands which had to be earned. He noted this deal had been chipped away so much in the past thirty months and in particular the last nine months. The Developers had shown up for each meeting, usually within twenty-four or forty-eight hours and answered every question and stared the press in the eyes; it was the only way to get things done.

Mr. Stiteler added he was tired of reading about the urban revitalization of Portland, Oregon, Albuquerque, San Diego, Denver, and now Phoenix. He commented he wanted to read about Tucson. He said he was not excited to read about Tucson in the *Arizona Daily Star* but he was excited to read about Tucson in the *New York Times*, or *The Wall Street Journal* because they would write about it. He said if the Mayor and Council voted for the Developers this evening, they were ready to go.

Mr. Stiteler said he envisioned Janos Wilder restoring an old building and working with the Theatre to protect it. He stated he and his partner were ready and wanted to do it. He added it was okay if the Mayor and Council voted against them. He said it would send a message that in the end Janos Wilder and new businesses downtown were not that important, and that private sector and capital cash were not needed. He concluded by adding he was at the meeting that evening to answer any questions put to him by the Mayor and Council and thanked them for being accessible to himself and Don Martin. He said it was nice to have been able to meet with them and talk through these things regardless of whether there was agreement or not.

Council Member Trasoff offered Mr. Crawford the same opportunity to address the Mayor and Council.

Michael Crawford, Rialto Theatre Foundation Board Member, said the Theatre never asked to be given anything for free. He said the Rialto Theatre was acknowledged as the one key success that Rio Nuevo had produced. He added the Theatre brought over a hundred thousand people a year downtown to spend their money at Club Congress, the Cup, Maynard's, Barrio Grill, Café Milano, and Enoteca. He said the Theatre had put on over one hundred thirty shows a year due to the great staff it employed over the last six years and tried and succeeded to be the engine of the east end of downtown Tucson.

Mr. Crawford said the Theatre had not asked for more from Mr. Stiteler; only that if the City was going to give away 4.3 million dollars of City property, the least which could be done was to transfer four thousand square feet of Developer property to the City. He said the Foundation did not care how it was done or what was negotiated in exchange for that but it was the least the Developers could do. He commented the Developers were not giving it to the Theatre; the City and District would acquire it and the Foundation would pay a lease payment to the Rio Nuevo District for it.

Mr. Crawford said the notion that the Theatre was asking to be given stuff was just nonsense. He said the problem with the current development deal discussed at last week's Mayor and Council Study Session was that he and the Theatre's attorney,

Michael McGrath, had spent every waking hour not mandatory to work at their jobs, working on negotiations with Mr. Stiteler and Mr. Martin. He said they thought they were close to a deal and had capitulated on many issues. He added on June 10, 2009, the Developers simply walked away from the negotiation table and told the Theatre to take it or leave it. He said the language put forth at that time which the Developers said was the final language then again changed on June 12, 2009 when they produced the forty-six page single spaced document now before the Mayor and Council.

Mr. Crawford stated for the Developers to come to this evening's meeting and not be willing to grant the Mayor and Council an extension so as to give them the opportunity to do their due diligence to examine the Agreement said a lot. He added this was a 4.3 million-dollar transaction that would produce about 1.7 million dollars in public goods in exchange for the 4.3 million dollars.

Mr. Crawford said the Theatre wanted a deal to happen and understood the value of the property to the Theatre's long term existence. He said the Theatre had bent over backward to try and accommodate the Developers' requests at every step of the way, and there had even been talk of an access agreement. He stated when the Theatre got the written document; it had turned into a written-recorded easement, although it was known that when property rights were transferred it was irrevocable at points of time. He said part of the language was changed at the Mayor and Council Study Session but that did not fix the rest of the deal because under this current Agreement, the Developers did not have to do their part with the Rialto Theatre.

Mr. Crawford commented as Mike Rankin, City Attorney said, the Developers' only penalty would be not to get the credit. He stated the minute the Developers signed this Agreement, ten days later, the options vested and they would get an eight hundred thousand dollar credit right away and a two hundred eighty thousand dollar piece of property behind One North Fifth for free. He said in total, the Developers would get 1.1 million dollars as soon as the deal was signed so the least they could do was give the Mayor and Council a chance to review the document and give the Theatre a chance to finalize the language.

Mr. Crawford noted the easement language, which was currently contained in the document, was completely unacceptable; he did not even understand it as an attorney who did this kind of work and that neither a written recorded easement, nor getting something in perpetuity, was ever discussed.

Mr. Crawford said again, in the amount of money they claimed had been given to the Theatre, the City was over compensating the Developers for the property. He stated the Developers were requiring the City to carry out an appraisal on the property which would be transferred to them, but this was not the case on the fifteen hundred square feet that was being transferred to the City. He said the Theatre understood that a premium could be obtained for real estate when it was landlocked and it was needed for what was required. He said things had to be fair and asked the Mayor and Council to continue this item and direct the City Manager to make a part of the Rialto deal contained in the

Agreement the mandatory part of the deal. He said the property and the bays in the front would transfer on the closing date of this deal.

Mr. Crawford added that the six hundred thousand-dollar contributions to the Developers by the City did not benefit the Theatre at all. He said he appreciated the wheelchair access to the upper balcony but it was not asked for nor was it needed as the Theatre's handicap seating was downstairs where it was safer. He commented there were some Theatre patrons who could use the elevator and he was more than happy to work out an access agreement along those lines, adding that the outdoor balcony upstairs was not needed as well. He stated this was a total of four hundred thousand dollars and added the City was giving the Developers a five hundred thousand-dollar credit for this. He said that was twenty percent return on the money.

Mr. Crawford noted nothing in the Agreement as currently written required the Rialto Theatre portion to occur. He said, in his opinion, the number one reason to do a deal was to acquire that property and perpetuity which the Theatre could utilize from now until all of those present were gone. He said he probably would not be around when the twenty-year lease was up, although he hoped he would be. He said he wanted the Theatre to continue on after this time period as the Rialto Foundation, composed of bankers, accountants, attorneys, and architects took what the Foundation did very seriously.

Mr. Crawford stated he previously informed the Mayor and Council that the Theatre would not be turned into the Fox Two but would be kept as it had been before and would do what it had always done. He said lease payments would be met and incremental improvements made. He added this meeting happened to fall on probably one of the busiest weeks the Rialto had experienced; there were five shows the Theatre was working on this week including a sold out show at Centennial Hall on June 18, 2009 and a community benefit on June 19, 2009, in addition to a show on June 21, 2009. He said the Theatre's staff had been stressed out about this matter and were concerned about their future employment as the ramifications were understood if this deal fell apart and the Theatre did not want that to happen.

Mr. Crawford stated the Theatre wanted this deal to be successful but it needed to be fair and the City needed to assure itself that things occurred which the Developers said would occur. He added he heard that there would be an issue regarding the City's compensation contribution of a half million dollars to the Developers and suggested these funds be placed in an escrow account controlled by the City where credit would be earned and then construction could commence. He stated the current wording was impractical for what was needed to be done and it did not give the Theatre the ability to get it done in a timely manner. He said the Theatre had committed to the City Manager and to the Mayor and Council that, if funds were immediately available, construction would be completed in eighteen months, although it could be done sooner.

Mr. Crawford stated he guaranteed the Mayor and Council if the Theatre received those funds, the rest of the funds would be forthcoming with the fund raising issues in place. He said under the current Agreement, however, it was not a mandatory thing and

the Mayor and Council needed this to be addressed. He said there were other issues in this Agreement he did not want to get into other than to say he was not clear what would occur if the five million dollars was not spent on the Rialto Block.

Mr. Crawford said the Developers earned credits other ways; they could earn those credits, but once those credits were gone and executed and title to the property those credits were associated with was taken, that property was gone. He added if the Agreement was reached at that point, based on the way it was written, there was no recourse as the property could just sit there; there was no requirement that the Developers invest in that property.

Mr. Crawford urged the Mayor and Council to postpone this item and allow the Theatre to finalize the negotiations as they had been very close to striking a deal. He said there could not be another party with an easement through the Theatre property. He stated it did not make sense to include a written-recorded easement; an access agreement would be better and could be mutually agreed upon. He commented this kind of agreement should be completed before being voted on so that everything could be executed at once.

Mr. Crawford concluded by saying he was concerned the property to be transferred and leased was not owned by the Developers; it was owned by one of their affiliates. He said when it came to specific performance or forcing a party to do something in a deal, they had to be a party to the deal. He stated the people who actually owned the Rialto Block were not signers on this deal but members of the company signing as well as a separate legal entity and this was something that should be of concern to the Mayor and Council.

Mr. Crawford, on behalf of the Board of the Rialto Foundation, asked the Mayor and Council delay their vote on this item. He said that with reference to the issue of the RNDB, this was the first time in his involvement with Rio Nuevo, that a development agreement involving Tax Increment Financing (TIF) funding and the RNDB had to do things that had gone first to the Mayor and Council. He stated usually, the City requested the RNDB do what it had already agreed to instead of the other way around. He said this Agreement should have gone to the RNDB first where it would be examined, approved and then put before the Mayor and Council like every other Rio Nuevo TIF funding project which had previously occurred.

Council Member Trasoff asked the City Manager, to clarify the issue of the affiliates referenced by Mr. Crawford.

Mr. Rankin said the contract disagreement was with the Downtown Tucson Development Company (DTDC) and the City's remedies would be against them. He said, with respect to the conveyance and the lease agreement, the property exchange involving the Rialto Theatre, was structured so that there had to be a subsequent agreement for those terms. He stated there was a six month time frame for that to happen and that agreement would necessarily require the signature of the property owner for the

property. He said the City had the correct party of DTDC on the Development Agreement as it did with the PDA. He added if there could be a successful negotiation of the subsequent agreement under the terms of this having to be executed within the six months, all the appropriate signatories would be on that Agreement.

Council Member Trasoff said she had a few more questions but would return to this item for a motion.

Council Member Leal said he appreciated both speakers adding to the Mayor and Council's ability to try and generate an overview of this item. He said he supposed the Agreement itself would be a distillation of an agreed upon overview and that he had a sense the proposal originally was very problematic and so could understand how what was before the Mayor and Council now could look good in many ways because of how problematic it was originally. He said there were still some issues yet to be resolved which were doable but it would be remiss for the Mayor and Council to continue moving forth assuming that things would work out.

Council Member Leal stated it gave him some additional concerns to note the subtext of tension that had evolved over time between the Theatre and the Developers. He said he did have some concern about the five-year lease for the property which would then be re-negotiated at market rates. He added he had some pause about doing that to the Theatre because at worst, there might be some antagonism, and at best there was just indifference toward the work and mission of the Theatre. He stated to leave the Theatre in a position to be dependent on good will where none might exist was injurious to them and possibly injurious to downtown Tucson.

Council Member Leal noted the elevator spoken about was really not for the Theatre but a benefit for the Developers to get people up to the balcony, which they controlled. He added one of the questions he had for the City Attorney concerned the Ronstadt Transit Center (RTC). He said early on, the air rights were being sold at twenty-one dollars a foot which he considered was something that should always be public.

Council Member Leal added the City should facilitate the potential evolution of alternate transportation modes rather than hemming people in and noted this happened two ways at the RTC, not just with the air rights but with the consumption of quite a bit of the frontage on Congress Street. He said the Center had already been boxed in with a lease on the northern end at Pennington which pre-empted the Center's evolution and expansion and now the same might occur on the southern end. He said he was told that term had changed from twenty-one dollars a foot to perhaps paying nothing per foot and he wanted to know the current status.

Mr. Rankin told Council Member Leal he was touching on two things. He stated first of all, there was concern regarding whether the conveyance of the RTC area with the Congress frontage would compromise the operability of that site. He said he had spoken to Jim Glock, Department of Transportation Director, about this issue and informed there

had been some plans over the years put together for different development configurations and bringing retail and commercial uses to this site. He stated the short answer was that some difficulties would be created. This issue had been addressed to Mr. Stiteler and Mr. Martin as recently as today to make sure they were amenable to not compromising this site. He said there had to be a certainty that whatever decisions were made would not compromise the operability of the RTC; there were a few options to which the Developers agreed as they did not want to participate in something that would hurt the operation of the RTC as well.

Mr. Rankin stated he thought the air rights were a separate issue and Council Member Leal was referring to a provision in the Agreement under which it related to a provision in a prior Depot Plaza Development Agreement. He said this was something going back to the PDA and the language from that Agreement carried forward to the present Agreement put the parties in the position of negotiating in good faith. He said in an amendment to that Agreement, one of the terms would be the conveyance to those air-rights valued as per the prior Depot Plaza Agreement at no charge. He added under the PDA, that provision survived the termination of the PDA, which was why it survived within the body of the document being discussed that evening.

Council Member Leal said there was tension between the community's long term needs and the short-term needs of development. He said too often the City compromised those long term future goals for short-term gain. He noted corporations did this all the time nationally while the public's interest was lost over time. He said his concern was that the issue of air rights was still a part of the Agreement and reiterated his concerns about the five-year lease. He said he did not think the Theatre should have to be subjected to this but should be able to operate without looking over its shoulder and being apprehensive.

Council Member Leal stated a forced marriage was being set up with people who were not that compatible and it was not in anyone's interest for this to be done. He added this Agreement should be structured so people who were fighting all the time were not put in a box. He stated to see this concern gone also begged the question of time; however a lot of ground had been covered and people had worked together on those issues. He said it should be continued to the Mayor and Council meeting of July 7, 2009, which would give folks more time to work on it.

Council Member Leal added that since the City Attorney and City Manager, became involved, matters had progressed a lot better and faster and their participation in this item was an asset. He added he was optimistic that a better balance could be reached so there could be private sector investment but also the Rialto Block investments already taken care of. He stated the Theatre's vision and mission for the future should not be nipped in the bud.

Council Member Scott inquired whether the Development Agreement with the DTDC mandated that the lobby areas and green room be leased to the Rialto Foundation.

Mr. Rankin said the execution of the Development Agreement would not mandate this but provided that within the next six months, those parties had the opportunity to resolve all of the terms. He added if that Agreement was not reached, the result would be that the amount of option credits the Developers could accrue over the course of this Development Agreement would be diminished by a million dollars, or in other words, the Developers could not earn the credits if the Agreement to convey the properties and to engage in the lease was not realized.

Council Member Scott wanted to know if that should be a part of the language or, given the six-month lease time, this could be resolved and it was not now important.

Mr. Rankin said he did not know that it was not important; rather, hearing the comments from Mr. Crawford, it was important to the Foundation. He noted all he could say was the way the Development Agreement was currently structured; the credits and options were earned through those conveyances. He added if the Agreement was not realized, the Developers could not get those credits.

Council Member Scott inquired whether the Rialto Foundation had agreed to the terms of the Development Agreement relating to the Theatre lease and lobby.

Mr. Rankin said based on Mr. Crawford's statements, the answer was in the negative. He said he believed the Theatre's position included the fundamental disagreements on the Rialto Theatre portion related to the conveyance of easement rights as opposed to just an access agreement, as well as making the conveyances mandatory rather than being subject to a subsequent agreement.

Council Member Scott asked whether the Development Agreement required the DTDC to develop the properties they acquired through the options on any timeline and did the City have any way to get the properties back.

Mr. Rankin said the Development Agreement did not impose conditions on the Developers after they acquired the properties through the options to develop within a certain timeframe or to develop in a certain manner. He said obviously the Developers would be subject to zoning and standard City codes and rules and regulations but they could not exercise those options until they had performed as required under the Agreement. He added if they performed, they could exercise the options.

Council Member Scott inquired whether the Development Agreement guaranteed that Janos Wilder would be part of the re-development.

Mr. Rankin said that Janos Wilder was not specifically called out in the Development Agreement and thus he could not say it guaranteed Janos would be one of the tenants brought into the re-development.

Council Member Scott said the Volvo property was purchased by the City of Tucson some time ago and had a value at that time. She said now that there was a

depressed real estate market; she assumed that any assessment of that property today would be in variation with what the City paid. She stated she wanted to be sure that as part of this Agreement, the Volvo property had the kind of assessment on it that still had something in it for the tax payers. She said she did not know if the offset for the loss of property real estate value was offset by the revenue generation that might come if this development occurred.

Mr. Rankin said that, according to his recollection, the City acquired the Volvo property for approximately two million dollars a few years ago and it had not been re-appraised by the City. He stated that acquisition was based on a current appraisal at that time. He added it was known the property market had gone down but he could not speculate to the Mayor and Council what the exact number would be; it would have to be seen through an appraisal. He said this Agreement would require a property appraisal be performed to set the value for the purposes of the option value that the Developers would then earn and be able to exercise based on their performance under the Agreement, but he could not give a number.

Council Member Scott asked if this property was purchased with any Highway-User Revenue Fund (HURF) dollars.

Mr. Rankin said he believed it was.

Council Member Scott inquired whether it was lawful to retrieve or receive back those dollars used that were HURF dollars.

Mr. Rankin said with the proceeds of previously purchased properties using HURF, the proceeds had to be re-invested into the program. It was his understanding that the Developers earned this through performance of different types of performance measures, it did not mean HURF would have to be reimbursed two million dollars.

Council Member Scott said she was glad to know this. She said incentives offered to develop and create economic growth, not only in the Rio Nuevo District but throughout the City as well. She added it was important for the City, as good stewards of the public's assets, to always look to do its horse-trading based on value-to-value exchanges.

Council Member Scott said the City needed to demonstrate to the public that what the City was giving up in terms of property, funds or anything else of value, the public received at a minimum equal but preferably a greater value in return. She noted this information should be made clear in one section of the Agreement for everyone's benefit. She stated the Agreement noted a three hundred thousand-dollar value for the two bays that would be conveyed to the Rialto Foundation and wanted to know if this was the accurate value of those two bays.

Mr. Rankin said the two bays were not an appraised value. He added, regardless of whether it was an accurate value or not, all one had to do was listen to the last two

speakers to understand what a fierce debate this issue raised. He said in trying to move this Agreement forward, a value was assigned to it as this transaction was structured so that the Developers earned options based on certain conveyances. He stated the City did the best it could in assigning values, both with respect to the bays and the value of five years of rent-free lease for the approximately twenty-five hundred square feet of the green room.

Council Member Scott asked what role the City of Tucson would play once the Mayor and Council approved this Agreement.

Mr. Rankin said that if the Mayor and Council approved the Agreement, it remained the City's responsibility to administer it and make sure that prior to the exercise of any of the options, the City was satisfied the Developers had performed as per the Agreement. He stated the City would have responsibilities with respect to the appraisals of the properties, and the environmental and archeological issues with respect to the identified properties. He added that overall, the City would have a fiduciary responsibility in managing this contract which was what this Agreement really was.

Council Member Scott said she had some concerns because this matter had not gone before the RNDB. She said the Foundation had some unresolved issues as well as those of Mr. Stiteler and Mr. Martin on the other side of the table and she felt because these were unresolved at this time, a complete document was not ready for the Mayor and Council to fully approve.

Council Member Uhlich expressed a sincere hope that the parties involved in this negotiation could stay at the table. She said she thought there had been great progress and said that in some respect, everyone was suffering from an attempt to build a foundation for good progress downtown on a bed of sand; that bed of sand was a PDA that did not provide for the beginnings of a negotiation. She stated, in fact, Mr. Stiteler had helped the Mayor and Council zero in on elements of that very complicated and disappointing document to a place where solid ground might be found so progress could be made. She said it was right to focus in this area and focus on the Rialto in great part. She stated she brought up the PDA because it certainly marked a deep loss of confidence and trust which she personally felt toward the previous City management; much of the bad taste in her mouth from that Agreement was inadvertently carried forward to where they presently were. She said this was unavoidable, as they were not starting with a clean slate but with a PDA she continued to find problems with.

Council Member Uhlich said this Development Agreement, from what she heard from all parties involved, laid out the right intentions and the right intended outcomes for the Rialto, and for investment in bringing new leases to downtown Tucson. She said her concern was that this document needed to consist of negotiated and guaranteed outcomes instead of just intentions; otherwise, they were not going to find meaningful progress.

Council Member Uhlich stated that part of the problem, which she noted during Study Session, was with the City being a key player in this issue. She noted some of the

potential surprises she found in the Development Agreement had to do with what the City said it would deliver. She said it was very disheartening at a late time to still be looking at what the exact footprint was of Congress frontage piece; that needed to be clear right now and if it was not, the City would set the Developers up for developing this in the future. She said the same thing went with the arts buildings in the previous version of the present Agreement.

Council Member Uhlich stated it made no sense for the City to lay out a vision for partnering with the Developers and maximizing their investment in buildings the City did not have a realistic hope of controlling. She said she tried to bring concrete elements, not only from the Rialto piece and the investor piece but from the City piece as well and thought it was incumbent on the City and that more time was required to do that. She added the City could get there but it had to do with ensuring the City clear away some of the problems that might linger from the PDA or clarifying and having time to make sure this was solid. She said she hoped everyone stayed at the table to make sure this would happen and to ensure this became the solid Development Agreement she knew everyone hoped and believed it could be.

Vice Mayor Romero said she had the pleasure of being able to work with Mr. Stiteler and Mr. Martin on this Development Agreement. She agreed with Council Member Uhlich when she said the PDA was much more convoluted and that the City had come to a place with the work of staff, partners, outside partners, and non-profits to a place where it was now simpler. She stated from the beginning of her tenure as a Council Member, she knew a development agreement between the City and a private developer must show value for value; the work that Mr. Stiteler and Mr. Martin had been doing in the last six months had been very good. She commended the two gentlemen for coming to the table.

Vice Mayor Romero said she knew the City got rid of the Agreement portion covering the affordable housing component. She stated when the conversation about affordable housing began, Mr. Stiteler said he did not want to just plan, he wanted to be able to build and put infrastructure together due to his wanting to move forward and believing in the affordable housing and the arts component. She noted unfortunately, as had been previously discussed, that portion was not going to be able to be delivered for the partners to come through.

Vice Mayor Romero said in a very smart way, gears were switched and it was seen what the needs were and where the focus was which evolved into working much closer with the Rialto Theatre Foundation. She stated that based on a conversation from the Mayor and Council Study Session of two weeks ago, what the Rialto was taking from this was very little; but two weeks later, the input given by the Mayor and Council, had given staff, Developers and the Rialto Foundation, a much better outlook for the health of the Rialto Theatre.

Vice Mayor Romero said it was important to note from the beginning, she never thought the Rialto should be leasing their bathrooms. She said that thousand square feet

should be owned and so was being contributed to the Rialto Foundation. She noted to the east of that was four hundred and fifty square feet that the Rialto wanted to use for more concessions and much more space for its personal use. She commented it was very valuable to have the five-year free rent for the Foundation to continue operating from the green room and thought completion of the Development Agreement was very close.

Vice Mayor Romero congratulated the partners and all staff involved for working very hard to get to the present point. She said conveyance of a hundred fifty thousand dollars to the Warehouse Arts Management Organization (WAMO), Scrappy's, and MOCA were a lot of benefits to this Development Agreement. She added there were reasonable question marks and it was very important the RNFDB receive a copy of this Development Agreement for them to know what they would be approving, hopefully, later on.

Vice Mayor Romero said she thought there were legitimate concerns and questions. She stated the Mayor and Council was one step away from getting to where they should be in continuing the conversation with the Rialto Foundation and finishing up that portion that would have the Foundation feel more comfortable in their vision for their future. She noted the legitimate points raised by her colleagues as they were one step away from the finish line; however, she added, she also respected the wishes of her colleagues who wanted a bit more time to review this item upon its return in two weeks in order to be happy with it. She added she wanted her colleagues to say this Agreement brought value for the value the City was putting forward.

Vice Mayor Romero said the Rialto Block was very important for the City of Tucson and reiterated again how valued all the steps taken to be there today were as well as the willingness for all involved to be accommodating and flexible in working with all the partners involved. She added these included not only the City and Council Offices but also all of the partners in the community.

Mayor Walkup said he had dealt with everybody involved in this project for many years and they were very honorable and professional individuals. He stated he was struck by the thought that what hung in the balance was the gateway to the City's downtown area. He said the Mayor and Council could not fail in this task and had to find a way to make this work. He noted he did not know how many of the public had read all forty-five pages of the Development Agreement, but said it was fascinating. He agreed with Council Member Uhlich who had mentioned that this document had matured into an extraordinarily complex document.

Mayor Walkup said all this was being done for the people of Tucson; the downtown area was for the generations to come and would be the next important step leading to a whole series of things ensuring that Tucsonans had a vital downtown. He said it was hard for him to predict what would happen next but he noted the Mayor and Council wanted to work with anyone who had an interest in this matter; if there was a property owner, someone with a business plan or with a Board or just ambitious, the City wanted to work to make this happen. He added he was committed, and the City Council

Members and staff were committed to ensure fair and just outcomes to this item. He said the people and generations to come who would benefit by being successful in this task should be considered.

Council Member Trasoff inquired whether the Theatre was owned by the Facilities District Board and through it, by the City.

Mr. Rankin said the Rio Nuevo Multipurpose Facilities District (RNMFD) owned the Theatre. He said there was what he believed to be a fifty-year lease to the Foundation for the operation of the Theatre.

Council Member Trasoff asked if the Foundation had a lease to operate the Theatre, but if the Rio Nuevo District Board owned the Theatre. She added if this Agreement went forward, it was not the Foundation but the Board which was the recipient of the one thousand square feet plus the four hundred fifty square feet.

Mr. Rankin said that was correct. He said, hopefully, he stated that information accurately in the beginning, which was that the conveyance piece and the lobby areas would be conveyed to the public entity, the Rio Nuevo District.

Council Member Trasoff inquired whether there were the four hundred thousand dollars of improvements being done to the Theatre. She said these were the funds being talked about in order to construct the new restroom facilities and other appurtenances downstairs. She noted the Lease was not in front of the Mayor of Council, and inquired whether it was the Foundation who made the decisions or was it the District Board since they owned the facility.

Mr. Rankin said the Rio Nuevo District was a necessary party to that Agreement so the terms of how those monies would be spent would have to be approved by the RNDB.

Council Member Trasoff said she felt the need to differentiate. She said she had heard allusions to other agreements that had gone sour and this was a different kind of agreement than she remembered the Mayor and Council doing in the past. She noted Mr. Stiteler and Mr. Martin owned the Rialto Block with the exception of the Theatre section. She added what the City was doing was not a 'give me' of land to them in exchange for things where it could then demand they must perform by such and such a date which was the case with the Thrifty block. She said this was an incentive agreement and asked if it could be differentiated in that way.

Mr. Rankin said he thought that was a fair characterization as this was certainly different than any of the transactions he could recall coming in front of the Mayor and Council or the RNDB during the last five years. He said that essentially, the Developers would be able to earn option credits against City land by virtue of their performance in the investments in the identified properties.

Council Member Trasoff said that what made it more difficult to demand certain timelines as the bottom line, was the City wanted this property developed now and this was the worst possible time for someone to be developing. She stated there were a few people interested in developing and so the reason to think about getting into this was in order, in a bad market, to make it feasible to get the kinds of people the City wanted into downtown. She noted Janos Wilder sent the Mayor and Council a letter showing the intention was there. She said the Developers should be incentivized to do it now and not leave that building boarded up for another four or five years until the market was more appropriate to do it.

Council Member Trasoff said the Mayor and Council had agreed to the six-month deadline which was the next day, June 17, 2009. She said it was a long six months and the Agreement was not the most fascinating reading although it was good to read through it and try and come up with the questions that had already resulted in some changes. She said she and Vice Mayor Romero were privy to a lot more conversation over the last few months as they were more directly involved in this matter and so had a certain advantage.

Council Member Trasoff stated her concern with this issue was that the City could lose private sector involvement as technically, the City needed to rely on the good graces of Mr. Martin and Mr. Stiteler. If the Mayor and Council did not act on this today; they would have the right to focus on just the Janos Wilder piece and she said this concerned her. She said Council Member Leal raised the issue of insecurity for the Theatre and she thought it was something everyone cared about. She noted that, in essence the Developers had it in perpetuity and either had that exact space free for five years until they decided to raze the building. When the Developers razed the building, they would have space in the Rialto Block until the new building was built with a green room in it that they could continue to rent as long as the Theatre was willing.

Council Member Trasoff said the Developers needed a Theatre at market rate. She stated she agreed with Vice Mayor Romero that the Developers should not be leasing their bathrooms. She added the green room was something reasonable, especially when the first five years were free, and there were other options they could have explored which were not for the Mayor and Council to decide.

Council Member Trasoff said she thought the Facilities District Board really needed to be brought into this issue because they were party to this and any monies, land or property given to them, through this Agreement, would go to them. She said she certainly heard the sentiments of her colleagues and there were many questions and changes suggested at the table that evening including the tightening of language relating to the Ronstadt property. She stated she would like to move to accept this Agreement but knew it would not pass.

It was moved by Council Member Trasoff to express strong support of the Agreement as it now stood, with clarifications that had been requested to be forthcoming on the Ronstadt Center and other points including the involvement of the RNMFD over the next few weeks in order to iron out the final details including the points raised this

evening by the Mayor and Council and to codify them, and finally, for the Mayor and Council to view the amended Agreement, preferably, a week before the July 7, 2009 meeting for consideration at that meeting.

Council Member Trasoff asked that these modifications and any changes that were made be brought to the Mayor and Council in sufficient time, preferably a week ahead of time, as they were dealing with a three week interval so that everyone had adequate time to review the materials. She added that, as a result of this, when the Mayor and Council did act, it would be with full knowledge and awareness.

Council Member Trasoff said she was not suggesting a complete re-negotiation of the basics as previously outlined, but that there was a basic framework in order to finalize the details, specifically refinement of language and some of the amendments discussed that evening. She stated it was a vote of confidence that the Mayor and Council had a good Agreement. She said this was a request that the development partners allow them these final three weeks to come up with an Agreement they hoped would be a signal for moving forward so that everybody would win.

Council Member Leal said it was inappropriate for the motion to include statements about the Mayor and Council support. He added it would be as wrong as saying the Mayor and Council was ambivalent about it but would bring it back if it could be fixed. He said the Agreement should be brought back in the period of time Council Member Trasoff suggested and then the issues the Mayor and Council raised could be addressed. He commented the Mayor and Council should not be influenced by prejudgment as the Mayor and Council did not support it as is. He asked that the language that the Mayor and Council supported it be removed.

Council Member Trasoff said she heard the basic concept and framework was there of trying to do the incentives.

Mr. Rankin pointed out to the Mayor and Council that regardless of any future motions passed or failed that evening, one of the reasons this issue was raised at that evening's meeting was because the Mayor and Council were operating under a six month deadline. He said the Agreement had been described as unique and he agreed with that as one of the unique provisions in it flowed from the PDA and the consequences with respect to that six-month window.

Mr. Rankin stated if the Mayor and Council did not reach agreement on final terms in the Development Agreement within that six-month window which expired on June 17, 2009, and if it was not a result of a breach by the Developers, that it was a default event and the City had exposure to damages, presently capped at nine hundred fifty-thousand dollars. He said those damages would be calculated based on the pre-development cost engaged in by the Developers during a defined time period.

Mr. Rankin added he felt it was his obligation to remind the Mayor and Council that, although there might be a motion to bring this issue back, and if that motion passed,

based on that, the City would offer the Developers to extend the term and to carry that out. He noted the Developers were not bound to accept that extension in which instance, the City was in a new position from which to move forward.

Council Member Leal said the Mayor and Council were cognizant of that fact.

Council Member Trasoff stated she would withdraw her motion.

It was moved by Council Member Leal, duly seconded, to return the Agreement for consideration at the July 7, 2009, meeting with clarifications on the points raised by the involved parties and to continue negotiations on the issues as outlined for resolution.

Council Member Uhlich advised the City Attorney in conjunction with his guidance just provided, it would be helpful to her to get clarification as well of the legal parties, all the players who were involved in the PDA, and other legal matters as these questions continued to arise. She said she wanted to make sure again the Mayor and Council was not setting situations where it could find itself trying to negotiate with different entities unknowingly.

Mr. Rankin said the party with which the City executed the PDA in December, 2008, was DTDC. He said, at the time, it was composed of Congress Street investors as well as Oasis Tucson and Williams and Dame. He said he knew there had been discussions about some of these things that had changed. He did not want to get into a legal analysis about the overall exposure but wanted to remind the Mayor and Council about the provisions of the PDA so that it could knowingly proceed.

Council Member Scott said in the original PDA, there were three partners in the partnership, which was no longer the case. She wanted to know if this changed the contractual agreements to some extent because of that change and some other items that were in the PDA but were no longer there. She stated the Mayor and Council was semi-starting from scratch but still had to link itself with the PDA but could now move into another section of agreements.

Mr. Rankin said if the Mayor and Council landed after all this in a dispute over breach and damages, those were certainly at the core of the issues that would be discussed and hopefully resolved.

Mayor Walkup asked if there was any discussion. Hearing none, he asked for a roll call vote.

Vice Mayor Romero asked for a re-stating of the motion.

Council Member Leal said his motion was that this Agreement be brought back for the July 7, 2009 meeting. In addition, that the issues the various Council Members raised about the terms be the focus of what was hoped was a continued conversation and

negotiation between the participants and brought back to the Mayor and Council for action.

Council Member Trasoff reiterated the Mayor and Council had to get the matter right when it came up again. She said she did not want to force the issue; however, her concerns were losing a private sector partner, and the benefits fought hard for over the last several weeks for the Rialto Theatre, that truly protected them from going into the future. She said the delay concerned her, but it would be up to the Developers to make that decision, and it was not up to the Mayor and Council.

Upon roll call, the results were:

Aye: Council Members Glassman, Uhlich, Scott, Leal and Trasoff; Vice Mayor Romero and Mayor Walkup

Nay: None

Motion to return the Agreement for consideration at the July 7, 2009, meeting with clarifications on the points raised by the involved parties and to continue negotiations on the issues as outlined for the resolution was passed by a roll call vote of 7 to 0.

## **15. APPOINTMENTS TO BOARDS, COMMITTEES AND COMMISSIONS**

Mayor Walkup announced City Manager's communication number 331, dated June 16, 2009, was received into and made part of the record.

Mayor Walkup asked for a motion to approve the appointments in the report.

It was moved by Vice Mayor Romero, duly seconded to appoint Bill Holmes to the Metropolitan Education Commission representing Libraries, Museums, and Arts.

Mayor Walkup asked if there was any discussion. Hearing none, he asked for a roll call vote.

Upon roll call, the results were:

Aye: Council Members Glassman, Uhlich, Scott, Leal and Trasoff; Vice Mayor Romero and Mayor Walkup

Nay: None

Motion was passed and by a roll call vote of 7 to 0.

Mayor Walkup asked if there were any personal appointments to be made.

There were none.

**16. ADJOURNMENT:** 7:47 p.m.

Mayor Walkup announced the next regularly scheduled meeting of the Mayor and Council would be held on Tuesday, June 23, 2009, at 5:30 p.m., in the Mayor and Council Chambers, City Hall, 255 West Alameda, Tucson, Arizona.

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MAYOR

ATTEST:

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CITY CLERK

**CERTIFICATE OF AUTHENTICITY**

I, the undersigned, have read the foregoing transcript of the meeting of the Mayor and Council of the City of Tucson, Arizona, held on the 16th day of June, 2009, and do hereby certify that it is an accurate transcription.

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DEPUTY CITY CLERK

RWR:tl:ds